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IN THE SUPREME COURT OF THE UNITED STATES

CHARLES THOMAS DICKERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether a voluntary confession may be admitted into evidence in the government's case-in-chief under 18 U.S.C. 3501, notwithstanding that the confession was taken in violation of the requirements of Miranda v. Arizona, 384 U.S. 436 (1966).

2. Whether 18 U.S.C. 3501 was properly considered by the court of appeals when the government had not raised the statute on appeal.

3. Whether the search warrant in this case described the evidence to be seized with sufficient particularity or, if not, whether the agents nonetheless relied in good faith on the warrant, when the warrant authorized a search for "evidence of the crime of bank robbery."

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STATEMENT

A grand jury sitting in the Eastern District of Virginia indicted petitioner on one count of conspiracy to commit bank robbery, in violation of 18 U.S.C. 371, three counts of bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and three counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). The district court granted petitioner's motion to suppress statements petitioner made to federal agents and physical evidence seized during the execution of a search warrant at his apartment. Pet. App. 1b-20b. The district court denied the government's motion for reconsideration. Id. at 1c-7c. The government appealed, and the court of appeals reversed. Id. at 1a-28a.

1. On January 24, 1997, the First Virginia Bank in

Alexandria, Virginia, was robbed of approximately $876. The robber carried a silver semi-automatic handgun and a black leather bag. Immediately after the robbery, a witness saw the robber place something into the trunk of a white Oldsmobile Ciera, get into the passenger side of the car, and ride away. The witness observed the getaway car's license plate number, and law enforcement agents determined that the car was registered to petitioner. C.A. App. 13-14, 73, 80-81.

On January 27, 1997, at around 5:30 p.m., a team including agents of the Federal Bureau of Investigation (FBI) and an Alexandria police detective went to petitioner's apartment in Takoma Park, Maryland. Several agents entered the apartment.[1] While the agents were there, FBI Special Agent Lawlor saw a large amount of cash (later determined to be $552) on petitioner's bed. Petitioner refused to allow the agents to search his apartment. Petitioner then accompanied the agents to the FBI field office in Washington, D.C. C.A. App. 14-15, 81-85, 94-96.

Agent Lawlor and Alexandria Detective Durkin interviewed petitioner at the FBI field office in Washington, D.C. Agent Lawlor testified that petitioner initially stated only that he had driven his white Oldsmobile Ciera to the Old Town area of Alexandria at about 10 a.m. to look at a restaurant. Petitioner

[1] At the suppression hearing, the testimony of Special Agent Christopher Lawlor and that of petitioner diverged on several issues. See C.A. App. 81. For example, Agent Lawlor testified that the entry was by consent after he knocked on the door, C.A. App. 5, while petitioner testified that the agents entered without being invited in. C.A. App. 44.

also said that he parked his car and went to get a bagel. Agent Lawlor added that the area in which petitioner was parked was near the scene of the bank robbery. C.A. App. 22, 73. Agent Lawlor testified that he then left the room and obtained by telephone a warrant to search petitioner's apartment for "[e]vidence of the crime of bank robbery." C.A. App. 22, 68-71. Lawlor testified that he returned to the interview room and told petitioner that other agents were about to search his apartment. Lawlor further testified that petitioner was then advised of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), and waived those rights in writing. C.A. App. 25-27, 72.

According to Lawlor, after the waiver, petitioner admitted that he had been with Jimmy Rochester on the morning of the robbery, and that Rochester had previously committed numerous robberies and might have robbed the First Virginia Bank. Petitioner stated that both he and Rochester left petitioner's car to go separate places, and that when he returned, Rochester was already in the car and the two drove away. He also stated that he stopped the car at Rochester's request, and Rochester put something in the trunk. Later, Rochester told him to run a red light, and petitioner began to surmise that Rochester may have robbed a bank. Petitioner also said that later that day Rochester gave him a silver .45-caliber pistol, and that the agents might find the gun and dye-stained money in petitioner's apartment. C.A. App. 27, 73-76. Officers subsequently searched petitioner's apartment and found a .45-caliber handgun, dye-stained money and a bait bill from

another robbery or robberies, ammunition, and masks. C.A. App. 39-41, 85.

2. Petitioner moved to suppress his statements and the evidence seized from his apartment. The district court held a hearing at which Agent Lawlor and petitioner both testified. Petitioner testified that, contrary to Agent Lawlor's testimony, he was not advised of his Miranda rights until after he made all of the statements at issue. Following the hearing, the district court granted petitioner's suppression motions. Pet. App. 1b-20b.[2] With respect to the statements, the district court found that petitioner was in custody during the questioning, and it credited petitioner's testimony that he was not read his Miranda rights and did not execute a waiver until after he made all of the statements at issue. Id. at 15b-20b. The court also suppressed the evidence seized from petitioner's apartment, ruling that the warrant, which authorized a search for "evidence of the crime of bank robbery," was insufficiently particular and could not have been relied on in good faith by the agents executing it. Id. at 8b-15b.

3. The government filed a motion for reconsideration. In support of its motion, the government submitted the affidavit of Detective Durkin, who was present throughout petitioner's interview. In his affidavit, Detective Durkin stated that petitioner had been read Miranda warnings and executed the written

[2] Petitioner also moved to suppress a leather backpack and solvent used to clean dye-stained money, which were recovered from a search of the getaway car. The district court denied that motion. Pet. App. 7b-8b & n.2.

waiver before petitioner gave his more elaborate statement acknowledging his activities with Rochester on the day of the robbery. The government further submitted petitioner's own handwritten statement acknowledging that he had been advised of his rights. C.A. App. 119-122. The government also argued (id. at 110-112) that even if petitioner's statements were elicited in violation of Miranda, they were voluntary and therefore admissible under 18 U.S.C. 3501, which provides in relevant part that "[i]n any criminal prosecution brought by the United States or by the District of Columbia, a confession * * * shall be admissible in evidence if it is voluntarily given," 18 U.S.C. 3501(a), that "[t]he trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession," and that the "presence or absence" of any particular factors "need not be conclusive on the issue of voluntariness of the confession," 18 U.S.C. 3501(b).

The district court denied the motion for reconsideration on the ground that the government had failed to establish that the additional evidence it proffered had been unavailable at the time of the suppression hearing. Pet. App. 5c. The district court's written order did not address Section 3501. See id. at 1c-7c.

4. A divided panel of the court of appeals reversed. Pet. App. 1a-28a.

a. With respect to petitioner's statements, the court first held that the district court did not abuse its discretion in denying the government's motion for reconsideration, because the

government had earlier opportunities to offer the evidence. Pet. App. 7a-8a. The court then turned to Section 3501. Although the majority noted that the government explicitly declined to make any argument based on 18 U.S.C. 3501 on appeal, Gov't C.A. Br. 34 n.19, the court held that petitioner's statements were admissible under Section 3501 notwithstanding the absence of prior Miranda warnings. Pet. App. 8a-19a.

The majority stated that "[Section] 3501, rather than the judicially created rule of Miranda," governs the admissibility of confessions in federal court. Pet. App. 17a. The majority noted that Congress had enacted Section 3501 "with the express purpose of legislatively overruling Miranda," id. at 12a, and that Congress had the authority to do so only if the rules set forth in Miranda were not required by the Constitution. Id. at 13a. Relying on cases decided after Miranda in which this Court "referred to the warnings as 'prophylactic,' and 'not themselves rights protected by the Constitution,'" id. at 14a (citations omitted), the court of appeals held:

> As a consequence, the irrebuttable presumption created by the Court in Miranda — that a confession obtained without the warnings is presumed involuntary — is a fortiori not required by the Constitution.
>
> Accordingly, Congress necessarily possesses the legislative authority to supersede the conclusive presumption created by Miranda pursuant to its authority to prescribe the rules of procedure and evidence in the federal courts.

Id. at 16a (footnote omitted). The majority noted the dissent's contention that, under the majority's theory, it remained unexplained how this Court could continue to apply Miranda to state

prosecutions if Miranda is not a constitutional rule. But the majority found that to be an "interesting academic question" that "has no bearing on our conclusion that Miranda's conclusive presumption is not required by the Constitution." Id. at 24a n.21.

The court of appeals therefore reversed the district court's order suppressing petitioner's statements. Pet. App. 19a. Because the district court had refused to suppress the fruits of petitioner's statements, the court of appeals also concluded that the district court had "necessarily found that [petitioner's] statements were voluntary under the Fifth Amendment" and thus admissible under Section 3501. Ibid.[3]

b. Judge Michael dissented in part. He would not have addressed the applicability of Section 3501, because the government had not invoked the statute and the court of appeals did not have the benefit of full briefing and argument on the issue. Pet. App. 25a-27a. In his view, it was "a mistake for our court to push § 3501 into this case." Id. at 27a.

5. Petitioner sought rehearing en banc. The government filed a brief in support of partial rehearing en banc. In that brief (at 12), the government argued that "on the current state of the Supreme Court's Miranda jurisprudence, taken as a whole," the lower federal courts could not properly "conclude that the Miranda rules

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[3] The court of appeals also reversed the district court's order suppressing the physical evidence seized from petitioner's apartment. Pet. App. 17a-19a. Judge Michael disagreed with the majority's conclusion that the search warrant was sufficiently particular, but agreed that the evidence seized was nonetheless admissible pursuant to the good-faith exception. Id. at 27a-28a.

lack a constitutional footing. * * * [T]he Supreme Court's continued application of the Miranda rulings to the States and on habeas review cannot be explained on any other ground than that the Court regards [the requirements set forth in Miranda] as implementing and effectuating constitutional rights." The government further argued that "[w]hatever retreats there may be in some decisions from Miranda's original constitutional premises, the lower federal courts are bound by Supreme Court holdings unless and until the Supreme Court itself overrules them." Id. at 6 (citing Agostini v. Felton, 521 U.S. 203, 237 (1997)). The government thus concluded that the lower federal courts "may not apply Section 3501 to admit confessions that Miranda would exclude." Id. at 12.

The court of appeals denied rehearing en banc by an 8-5 vote. Pet. App. 1d-2d.

DISCUSSION

1. Petitioner seeks review (Pet. 9-14) of the court of appeals' holding that 18 U.S.C. 3501 supersedes this Court's decision in Miranda v. Arizona, 384 U.S. 436 (1966). The question whether Congress may supersede Miranda and authorize the admission of an unwarned, but voluntary, statement in the government's case-in-chief is one of exceptional importance that warrants this Court's review.

If the Miranda decision and its progeny represent an exercise of this Court's authority to implement and effectuate constitutional rights, those decisions are binding on Congress. See City of Boerne v. Flores, 521 U.S. 507, 516-529 (1997).

Accordingly, the crucial issue in deciding whether 18 U.S.C. 3501 can supersede Miranda is whether the Miranda rulings are constitutionally based or, alternatively, represent only supervisory "rules of procedure and evidence." Pet. App. 3a. This Court's case law since Miranda has, we believe, created considerable confusion over the precise nature of the Miranda rules and the constitutional source of the Court's authority to pronounce and apply them. Nevertheless, we believe that the body of this Court's existing decisions on the issue requires the conclusion that Miranda implements and protects constitutional rights. Critical to that conclusion is the fact that the Court has consistently applied Miranda to the States and on federal habeas review of state convictions - applications that can only be justified on the premise that Miranda states a rule of constitutional law.

Because the Miranda decision is of constitutional dimension, Congress may not legislate a contrary rule unless this Court were to overrule Miranda. We submit that principles of stare decisis do not favor the overruling of Miranda, and we do not request the Court to take that step. In the thirty-three years since that decision was handed down, it has become embedded in the law and refined through the decisions of this Court. We acknowledge that there is a profound cost to the truthfinding function of a criminal trial when reliable evidence is suppressed. That value necessarily must weigh heavily in this Court's appraisal of the continued validity of Miranda. In many respects, however, Miranda is

beneficial to law enforcement. On balance, we do not believe that the developments since Miranda warrant reexamination of the essence of the balance that the Court has struck between the needs of law enforcement and the rights of a suspect.[4] Accordingly, Section 3501 cannot constitutionally authorize the admission of a statement that would be excluded under this Court's Miranda cases.

a. The Self-Incrimination Clause of the Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." In Miranda, the Court held that

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[4] That balance has been described as follows:

> Custodial interrogations implicate two competing concerns. On the one hand, the need for police questioning as a tool for effective enforcement of criminal laws cannot be doubted. Admissions of guilt are more than merely desirable; they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law. On the other hand, the Court has recognized that the interrogation process is inherently coercive and that, as a consequence, there exists a substantial risk that the police will inadvertently traverse the fine line between legitimate efforts to elicit admissions and constitutionally impermissible compulsion. Miranda attempted to reconcile these opposing concerns by giving the defendant the power to exert some control over the course of the interrogation. Declining to adopt the more extreme position that the actual presence of a lawyer was necessary to dispel the coercion inherent in custodial interrogation, the Court found that the suspect's Fifth Amendment rights could be adequately protected by less intrusive means. Police questioning, often an essential part of the investigatory process, could continue in its traditional form, the Court held, but only if the suspect clearly understood that, at any time, he could bring the proceeding to a halt or, short of that, call in an attorney to give advice and monitor the conduct of his interrogators.

Moran v. Burbine, 475 U.S. 412, 426-427 (1986) (citations and internal quotation marks omitted).

statements stemming from custodial interrogation of a suspect are inadmissible at trial unless the police first provided the suspect with a set of four specific warnings.[5] 384 U.S. at 444. The Court noted that, while it might not find statements taken without the warnings "to have been involuntary in traditional terms," id. at 457, procedural safeguards were necessary because custodial interrogation is inherently coercive, and that, "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice." Id. at 458; see id. at 467.

In resolving the "constitutional issue" of the "admissibility of statements obtained from a defendant questioned while in custody," 384 U.S. at 445, Miranda made clear that the safeguards it adopted were not themselves constitutional rights. The Court said: "Congress and the States are free to develop their own safeguards for the privilege, so long as they are fully as effective as those described above in informing accused persons of their right of silence and in affording a continuous opportunity to exercise it." Id. at 490. But, the Court continued, "[t]he warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a

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[5] Those warnings are that (1) the defendant has the right to remain silent; (2) any statement he makes may be used as evidence against him; (3) he has the right to the presence of an attorney; and (4) if he cannot afford an attorney, one will be appointed for him. 384 U.S. at 479.

defendant." Id. at 476; see also id. at 491 ("Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.").

In 1968, Congress enacted Section 3501 with the express purpose of overturning Miranda. Congress did not accept the Court's invitation to devise an alternative procedural safeguard for Fifth Amendment rights; rather, it sought through Section 3501 to restore the test for admissibility of custodial statements that prevailed before Miranda. See S. Rep. No. 1097, 90th Cong., 2d Sess. 51 (1968). Under Section 3501, the question whether the police warned a suspect held in custody of his constitutional rights before interrogating him is treated, as it was before Miranda, as one of several non-exclusive factors to be considered in determining voluntariness. See, e.g., Haynes v. Washington, 373 U.S. 503, 516-517 (1963) (considering absence of warnings about right to remain silent, that statements could be used against suspect, and that suspect had right to counsel in assessing voluntariness under the Due Process Clause).

The court of appeals concluded that Congress is free to supersede Miranda because this Court's decisions reveal that Miranda's requirements are not based in the Constitution. Pet. App. 14a-16a. We do not agree. The Court in Miranda clearly rested its holding on the Fifth Amendment, explaining that in the four cases that were before the Court in Miranda, the unwarned confessions "were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the

privilege." 384 U.S. at 491; accord id. at 439, 458, 467, 477. It is true that the Court has retreated from that aspect of its reasoning in Miranda. In a line of cases beginning with Michigan v. Tucker, 417 U.S. 433 (1974), the Court has held that a failure to apply Miranda's interrogation safeguards is not per se a constitutional violation and that a statement will not invariably be deemed "compelled" in violation of the Fifth Amendment privilege against compelled self-incrimination simply because it was unwarned. In Tucker, the Court declined to suppress the testimony of a witness whose identity was learned from a statement taken in violation of Miranda, because the Court found that the police conduct at issue did not "breach the right against compulsory self-incrimination[,] * * * but departed only from the prophylactic standards later laid down by this Court in Miranda to safeguard that privilege." 417 U.S. at 445-446.

Since Tucker, this Court has frequently observed that the Miranda rules are "prophylactic" in character and that an unwarned statement is not necessarily "compelled" in violation of the Fifth Amendment. See, e.g., Davis v. United States, 512 U.S. 452, 457 (1994); Duckworth v. Eagan, 492 U.S. 195, 203 (1989); Connecticut v. Barrett, 479 U.S. 523, 528 (1987). Consistent with the description of Miranda's procedures as prophylactic, in Oregon v. Elstad, 470 U.S. 298 (1985), the Court declined to suppress the fruits of an unwarned statement, emphasizing that the "fruit of the poisonous tree" doctrine "assumes the existence of a constitutional violation" (id. at 305), but that "[t]he Miranda exclusionary rule

* * * may be triggered even in the absence of a Fifth Amendment violation." Id. at 306. The Court has also recognized a "public safety" exception to Miranda's "prophylactic rule," stressing that a violation of the procedural safeguards of Miranda is not itself a violation of the Fifth Amendment. New York v. Quarles, 467 U.S. 649, 657 (1984). And the Court has concluded that unwarned statements may be used to impeach the defendant at trial notwithstanding the violation of Miranda, if the traditional test for "voluntariness" is satisfied. See Oregon v. Hass, 420 U.S. 714, 722-723 (1975); Harris v. New York, 401 U.S. 222, 224 (1971).

Considered in isolation, the language used in Tucker and its progeny that a violation of Miranda is not a violation of the Constitution could be read to support an inference that Miranda is not a constitutional rule. Indeed, the Fourth Circuit read those statements to mean that Miranda is simply a "judicially created rule" that may be supplanted by legislation. Pet. App. 17a. We agree that these statements generate tension within the Court's Miranda decisions. A well-established line of this Court's cases, however, requires the conclusion that Miranda, as applied by this Court, does indeed rest on a constitutional basis.

Beginning with Miranda itself, this Court has repeatedly applied the warnings requirement, and its associated suppression remedy, to cases arising in state courts.[6] See, e.g., Stansbury v.

[6] Three of the four consolidated cases in Miranda itself arose in state courts, as did Tucker, Elstad, Quarles and other cases on which the court of appeals relied in concluding that Miranda lacks a constitutional basis. The fourth of the (continued...)

California, 511 U.S. 318 (1994) (per curiam); Minnick v. Mississippi, 498 U.S. 146 (1990); Arizona v. Roberson, 486 U.S. 675 (1988); Edwards v. Arizona, 451 U.S. 477, 481-482 (1981). Although this Court has the power to announce rules of procedure and evidence binding on federal courts, it has consistently disclaimed — both before and after Miranda — any such supervisory authority over state courts. The Court's authority in state cases "is limited to enforcing the commands of the United States Constitution." Mu'Min v. Virginia, 500 U.S. 415, 422 (1991). See Smith v. Phillips, 455 U.S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings and may intervene only to correct wrongs of constitutional dimension."). Because federal judges "may not require the observance of any special procedures" in state courts "except when necessary to assure compliance with the dictates of the Federal Constitution," Harris v. Rivera, 454 U.S. 339, 34[illegible]-345 (1981) (per curiam), the Court's continued application of Miranda's exclusionary rule in state cases necessarily means that Miranda rests on the Court's authority to apply the Constitution.

The same point is manifest in this Court's holding that claims of Miranda violations are cognizable on federal habeas review. See Withrow v. Williams, 507 U.S. 680, 690-695 (1993); see also Thompson v. Keohane, 516 U.S. 99 (1995). Habeas corpus is available only for claims that a person "is in custody in violation

(...continued)
consolidated cases in Miranda involved a federal conviction (Westover v. United States, No. 761).

of the Constitution or the laws or treaties of the United States." 28 U.S.C. 2254(a). Because Miranda is not a "law" or a treaty, the Court's holding in Withrow necessarily depends on the premise that the requirements of Miranda implement and protect constitutional rights.

Significantly, this Court has regularly described the Miranda holding, and subsequent extensions of that holding, as resting on constitutional grounds. See, e.g., Illinois v. Perkins, 496 U.S. 292, 296 (1990) (describing Miranda rules as resting on "the Fifth Amendment privilege against self-incrimination"); Butler v. McKellar, 494 U.S. 407, 411 (noting holding of Arizona v. Roberson "that the Fifth Amendment bars police-initiated interrogation following a suspect's request for counsel in the context of a separate investigation"); Michigan v. Jackson, 475 U.S. 625, 629 (1986) ("The Fifth Amendment protection against compelled self-incrimination provides the right to counsel at custodial interrogations."); Moran v. Burbine, 475 U.S. 412, 427 (1986) (describing Miranda as "our interpretation of the Federal Constitution"); Edwards v. Arizona, 451 U.S. 477, 481-482 (1981) (describing Miranda as having "determined that the Fifth and Fourteenth Amendments[]" required custodial interrogation to be preceded by advice concerning the suspect's rights). As those cases highlight, the Court's description of the Miranda rules as "prophylactic" does not mean that the rules are therefore extra-constitutional. As the Court stated in Withrow: "'[p]rophylactic' though it may be, in protecting a defendant's Fifth Amendment

privilege against self-incrimination, Miranda safeguards 'a fundamental trial right.'" 507 U.S. at 691 (emphasis omitted).

The court of appeals in this case did not confront the import of this Court's application of Miranda to the States and on habeas review, nor did the court address the Court's own description of the Miranda-based holdings as constitutional in nature. Rather, the court stated that, although it "raises an interesting academic question," this Court's application of Miranda in state prosecutions "has no bearing on our conclusion that Miranda's conclusive presumption is not required by the Constitution." Pet. App. 24a n.21. Any conclusion about the legal source of Miranda, however, must take into account the Court's application of that case to the States, since this Court could not do so if Miranda were a non-constitutional rule of procedure or evidence.

In sum, this Court's Miranda jurisprudence establishes that the Miranda rules, as applied by the Court, have a constitutional foundation. The specific warnings required by Miranda are not themselves mandated by the Fifth Amendment. But this Court's continued application of the Miranda rulings to the States and on habeas review cannot be explained on any other ground than that the Court regards them as implementing and effectuating constitutional rights. Because Miranda is of constitutional dimension, it cannot be superseded merely by legislation. See City of Boerne v. Flores, 521 U.S. at 516-528; Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). Accordingly, before Section 3501 could be applied in a manner that is inconsistent with this Court's Miranda

jurisprudence, the Court would have to reconsider and overrule Miranda.

b. The resolution of whether Miranda should be overruled or reaffirmed raises fundamental questions and implicates competing interests of the highest order. Weighing those interests is not an easy task. But in our view, sound application of principles of stare decisis dictates that at this point in time, thirty-three years after Miranda was decided and many years after it has been absorbed into police practices, judicial procedures, and the public understanding, the Miranda decision should not be overruled. As Chief Justice Burger stated nineteen years ago: "The meaning of Miranda has become reasonably clear and law enforcement practices have adjusted to its strictures; I would neither overrule Miranda, disparage it, nor extend it at this late date." Rhode Island v. Innis, 446 U.S. 291, 304 (1980) (Burger, C.J., concurring).

Stare decisis "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact." Vasquez v. Hillary, 474 U.S. 254, 265-266 (1986). While "stare decisis is not an 'inexorable command,'" especially in a constitutional case, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 854 (1992), "[e]ven in constitutional cases, the doctrine carries such persuasive force that [the Court] ha[s] always required a departure from precedent to be supported by some 'special justification.'" United States v.

International Business Machines Corp., 517 U.S. 843, 856 (1996). Among the factors considered in stare decisis analysis are the costs and workability of the prior decision, developments in the law that have affected the validity of the past precedent, and changes or perceived changes in the factual premises underlying the precedent. See, e.g., Casey, 505 U.S. at 854-855; Payne v. Tennessee, 501 U.S. 808, 827-830 (1991); Vasquez v. Hillery, 474 U.S. 254, 265-266 (1986). In addition, in a case involving a decision of the significance of Miranda, larger considerations of the continuing value of the decision enter into the calculus as well. Cf. Casey, 505 U.S. at 861.[7]

(i.) Costs and Workability. The core holding of Miranda is that statements that are obtained in custodial interrogation are inadmissible in the prosecution's case-in-chief unless the suspect, before speaking, was given the prescribed warnings and waived his rights to remain silent and to consult counsel. Any consideration of whether that holding should be overruled must begin with an assessment of Miranda's costs and benefits, and whether Miranda has proven workable in practice.

There are undeniably instances in which the exclusionary rule of Miranda imposes costs on the truth-seeking function of a trial,

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[7] Reliance interests are also an important factor, and rules of criminal procedure do not in general give rise to substantial reliance interests. See Payne v. Tennessee, 501 U.S. 808, 828 (1991). It is unlikely that there are any criminal defendants who gave unwarned confessions in reliance on the belief that they would not be used in the prosecution's case-in-chief. As we note below, however, see p. 36, infra, it is of significance that the requirements of Miranda have shaped years of police conduct and governed decades of criminal prosecutions.

by depriving the trier of fact of "what concededly is relevant evidence." Colorado v. Connelly, 479 U.S. 157, 166 (1986); see also, e.g., McNeil v. Wisconsin, 501 U.S. 171, 181 (1991) (the "ready ability to obtain uncoerced confessions is not an evil but an unmitigated good"); Michigan v. Harvey, 494 U.S. 344, 350 (1990) (Miranda's exclusionary rule "result[s] in the exclusion of some voluntary and reliable statements"); Oregon v. Elstad, 470 U.S. 298, 312 (1985) (loss of "highly probative evidence of a voluntary confession" is a "high cost to legitimate law enforcement").[8] In our view, however, the inevitable cost of Miranda's exclusionary rule does not so impede or undermine law enforcement that the overruling of Miranda is warranted. Rather, the judgment and experience of federal law enforcement agencies is that Miranda is workable in practice and serves several significant law enforcement objectives. Indeed, in the thirty-one years since the enactment of Section 3501, the United States has never asked this Court to reconsider its decision in Miranda.

Miranda's core procedures are not difficult to administer.

[8] The Court has made the same point in discussing the Fourth Amendment exclusionary rule. See, e.g., Pennsylvania Bd. of Probation & Parole v. Scott, 524 U.S. 357, 364 (1998) ("Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: It undeniably detracts from the truthfinding process and allows many who would otherwise be incarcerated to escape the consequences of their actions."); United States v. Leon, 468 U.S. 897, 907 n.6 (1984) ("The substantial social costs exacted by the exclusionary rule * * * have long been a source of concern. * * * 'Any rule of evidence that denies the jury access to clearly probative and reliable evidence must bear a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official lawlessness.'") (quoting Illinois v. Gates, 462 U.S. 213, 257-258 (1983) (White, J., concurring)).

Federal agents do not find it difficult, in general, to read a suspect his rights and determine whether the suspect wishes to answer questions. And the administration of Miranda warnings is useful, for a defendant who waives his rights will often forego any challenge to the admissibility of an ensuing confession. In those instances in which such challenges nonetheless are made, compliance with Miranda helps ensure that statements will be deemed admissible because they were voluntary. Indeed, long before Miranda was decided, the Federal Bureau of Investigation had adopted a practice of administering warnings similar to those required by Miranda to all suspects before questioning them. See 384 U.S. at 483-488 & n.34. That practice was instituted to ensure that suspects are treated fairly while simultaneously obtaining important investigative information and reliable statements that are admissible in court. See id. at 483 n.54 (noting statement of J. Edgar Hoover, then-Director of the FBI, explaining that the FBI's policy of giving warnings was based on the principle that "[l]aw enforcement, * * * in defeating the criminal, must maintain inviolate the historic liberties of the individual.") The FBI's policy was workable before Miranda, and the FBI has had very little difficulty complying with the bright-line core mandates of the Miranda decision since 1966.

The experience of other federal law enforcement agencies since Miranda has also confirmed that Miranda has proved workable in practice and is in many respects beneficial to law enforcement. It is the policy of some agencies, such as the Internal Revenue

Service and the Bureau of Alcohol, Tobacco, and Firearms, to provide Miranda warnings not only before engaging in custodial interrogation, but also in at least some non-custodial settings. The experience of those agencies is that the core Miranda warnings and waiver framework is administrable and does not impede law enforcement. In short, federal law enforcement agencies have concluded that the Miranda decision itself generally does not hinder their investigations and the issuance of Miranda warnings at the outset of a custodial interrogation is in the best interests of law enforcement as well as the suspect.

This Court has frequently noted that it is a virtue of Miranda that it affords bright-line rules that can be readily applied by the police and the courts to a large variety of factual circumstances.[9] Indeed, even when, as in Quarles, the Court created an exception to the Miranda rules for public safety, the Court explained that "the exception will not be difficult for

[9] See Withrow v. Williams, 507 U.S. 680, 695 (1993) ("There is little reason to believe that the police today are unable, or even generally unwilling, to satisfy Miranda's requirements."); Arizona v. Roberson, 486 U.S. 675, 681 (1988) ("We have repeatedly emphasized the virtues of a bright-line rule in cases following Edwards, as well as Miranda."); Moran v. Burbine, 475 U.S. 412, 425 (1986) ("As we have stressed on numerous occasions, '[o]ne of the principal advantages' of Miranda is the ease and clarity of its application."); Berkemer v. McCarty, 468 U.S. 420, 432 (1984) (noting "the simplicity and clarity" of Miranda); Fare v. Michael C., 442 U.S. 707, 718 (1979) (Miranda's "gain in specificity, which benefits the accused and the State alike, has been thought to outweigh the burdens that the decision in Miranda imposes on law enforcement agencies and the courts."); see also New York v. Quarles, 467 U.S. 649, 664 (1984) (O'Connor, J., concurring in the judgment and dissenting in part) (Miranda rules have "afforded police and courts clear guidance on the manner in which to conduct a custodial investigation.").

police officers to apply," 467 U.S. at 658, that "police officers can and will distinguish almost instinctively" between questions permitted and prohibited under the exception, id. at 658-659, and that the exception will "simply free [police officers] to follow their legitimate instincts when confronting situations presenting a danger to the public safety," id. at 659.

While Miranda itself is generally workable, federal law enforcement agencies have encountered difficulties with some of the extensions of Miranda in Edwards v. Arizona, 451 U.S. 477, 480 (1981), and later cases. Those cases require that, once a suspect invokes his right to counsel during custodial interrogation, law enforcement agents may not later reinitiate questioning, even on matters unrelated to the crime for which the suspect was being held and questioned. See Arizona v. Roberson, 486 U.S. 675 (1988); Minnick v. Mississippi, 498 U.S. 146 (1990). Whatever difficulty is caused by those decisions, however, is more properly charged to the account of Edwards and Roberson than to Miranda, and any such difficulty would properly be far more relevant should the Court be faced with reconsideration of those decisions rather than Miranda itself.[10] The Miranda doctrine has undergone a continuous course

[10] The Court has already tailored the Miranda doctrine as necessary to make it more workable. See, e.g., Davis v. United States, 512 U.S. 452 (1994) (ambiguous invocation of right to counsel does not require cessation of all questioning); Berkemer v. McCarty, 468 U.S. 420 (1984) (Miranda warnings not required in a routine traffic stop); New York v. Quarles, 467 U.S. 649, 657 (1984) (public safety exception). The Court has not recently decided an Edwards issue, but in United States v. Green, 504 U.S. 908 (1992) (No. 91-5121), the Court granted certiorari to review "[w]hether Edwards * * * requires the suppression of a voluntary

(continued...)

of development in this Court since 1966. Insofar as it is shown that some applications of Miranda create inequity or are otherwise unworkable, there is no reason to believe that the doctrine will not continue to develop in future years as appropriate.[11]

Finally, a return to a totality-of-the-circumstances test in all settings is unlikely to be more workable in practice than is the Miranda rule itself. The underlying Fifth Amendment rule that confessions are inadmissible unless they are found voluntary under the traditional totality-of-the-circumstances test remains applicable, even if the Miranda warnings have been administered. See, e.g., Miller v. Fenton, 474 U.S. 104 (1985). As a general

[10](...continued)
confession because law enforcement officers initiated interrogation of the suspect five months after he invoked his right to counsel in connection with an unrelated offense, where the suspect consulted with counsel and pleaded guilty to the unrelated offense prior to the interrogation." The case became moot after oral argument when respondent died. See 507 U.S. 545 (1993). Had the case not become moot, the Court would have decided whether a further refinement to the Edwards-Roberson rules was appropriate.

[11] Another problem that can occur in applying Miranda is that officers who have detained or are questioning a suspect without arresting him may be found by a court to have applied a "restraint on freedom of movement of the degree associated with a formal arrest." Thompson v. Keohane, 516 U.S. 99, 112 (1995) (internal quotation marks and citations omitted). In that situation, an officer may inadvertently fail to issue Miranda warnings. As this Court has noted, "the task of defining 'custody' is a slippery one, and 'policemen investigating serious crimes [cannot realistically be expected to] make no errors whatsoever.'" Oregon v. Elstad, 470 U.S. 298, 309 (1985). It therefore stands to reason that in some close cases, the officers will make a mistake, but it will be a "reasonable" one under all the circumstances. While the Court has not considered whether to recognize an exception to Miranda in such a case, it has adopted a rule in the Fourth Amendment exclusionary rule context for cases in which police acted in good-faith reliance on a warrant or authorization by another governmental actor. See United States v. Leon, 468 U.S. 897, 906-913 (1984); Arizona v. Evans, 514 U.S. 1, 15 (1995).

matter, however, "cases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare." Berkemer v. McCarty, 468 U.S. at 433 n.20. In the absence of Miranda, it is thus likely that additional pressure would be placed on the voluntariness doctrine. Although many law enforcement agents would no doubt continue to follow the Miranda procedures to help ensure the admissibility of confessions they obtain, it is likely that some police departments would become less rigorous in requiring warnings and that some police officers would, in the "often competitive enterprise of ferreting out crime," Johnson v. United States, 333 U.S. 10, 14 (1948), fail to issue warnings before conducting custodial interrogation. The result would likely be an additional volume of litigation focusing on the totality-of-the-circumstances voluntariness standard, which takes into account not only what the agents say and do, see, e.g., Miller, 474 U.S. at 116, but also facts about the particular suspect (such as his maturity, education, physical condition, mental health, and knowledge of constitutional rights, see Withrow, 507 U.S. at 693 (citing cases)), about the circumstances of the questioning (the length of the detention, the length and nature of the interrogation, the physical constraints or deprivations imposed, the suspect's access to friends and relatives, see id. at 693-694; Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); Miranda, 384 U.S. at 445-446, and other factors. Such a voluntariness inquiry would likely be

more difficult and uncertain in application than Miranda.

(ii.) Relationship to Related Principles of Law. Perhaps the feature of Miranda that has raised the greatest doctrinal doubt about that decision's validity is the tension that has emerged in this Court's cases that followed the Miranda decision itself. The Court has consistently premised those decisions on the proposition that Miranda's holding requires the suppression of unwarned statements in the government's case-in-chief in state and federal cases.[12] And the Court has never suggested that the core holding of Miranda should be overruled. Indeed, if this Court were to overrule Miranda, it would not only have to disavow the reasoning of virtually all of its cases that have addressed the Miranda rule, but would also have to overrule directly at least eleven cases that have reaffirmed that a confession obtained in violation of Miranda must be suppressed in the government's case-in-chief.[13]

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[12] The one exception is the Court's holding in New York v. Quarles, 467 U.S. 649 (1984), recognizing a "public safety" exception to Miranda. But that case did not question the general rule against the use of unwarned statements in the government's case-in-chief, which the Court restated the following year in Oregon v. Elstad, 470 U.S. 258, 306-307 (1985).

[13] Thompson v. Keohane, 516 U.S. 99 (1995) (holding that whether a suspect is "in custody" for Miranda purposes is a mixed question of law and fact deserving independent federal court review); Withrow v. Williams, 507 U.S. 680 (1993) (holding Miranda claims are cognizable on collateral review); Minnick v. Mississippi, 498 U.S. 146 (1990) (suppressing statement given after defendant had requested and been provided counsel, but while counsel was not present); Pennsylvania v. Muniz, 496 U.S. 582 (1990) (suppressing unwarned response to question asked during station house sobriety test); Arizona v. Roberson, 486 U.S. 675 (1988) (suppressing statement given during police-initiated interrogation following suspect's request for counsel, even though interrogation was in the context of a separate investigation); (continued...)

The Court's decisions limiting the application of Miranda's suppression rule outside of the government's case-in-chief, however, have led some observers to conclude that Miranda has lost its character as a rule that protects constitutional rights. The Court's decisions in Tucker and later cases rest on the conclusion that the procedural safeguards of Miranda are not required by the Constitution and that a violation of Miranda's prophylactic rules does not necessarily produce statements that are themselves "compelled." That reasoning is the foundation of this Court's holdings that unwarned, but voluntary, statements may be used for impeachment and for the acquisition of derivative evidence that may be admitted at trial.[14] Since the Court has said that Miranda violations do not necessarily involve a violation of the Constitution, the question arises whether this Court has properly determined to apply a suppression remedy in the government's case-

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[13](...continued)
Berkemer v. McCarty, 468 U.S. 420 (1984) (holding unanimously that Miranda applies to questioning on misdemeanor charges); Smith v. Illinois, 469 U.S. 91 (1984) (per curiam) (holding that defendant's responses to questions asked after he requested counsel cannot be used to cast doubt on clarity of his original request); Edwards v. Arizona, 451 U.S. 477 (1981) (holding that once defendant requests counsel, all questioning must cease); Estelle v. Smith, 451 U.S. 454 (1981) (suppressing unwarned statements given during court-ordered competency examination); Orozco v. Texas, 394 U.S. 324 (1969) (suppressing unwarned statement taken while the suspect was in his own bed but after he had been arrested); Mathis v. United States, 391 U.S. 1 (1968) (suppressing unwarned statement elicited by IRS agent during prison interview).

[14] In contrast, statements "compelled" under a grant of immunity may generally not be used, consistent with the Fifth Amendment, either for impeachment, see New Jersey v. Portash, 440 U.S. 450, 458-459 (1979), or for the acquisition of derivative evidence that may be introduced against the defendant, see Kastigar v. United States, 406 U.S. 441 (1972).

in-chief in all prosecutions, federal and state, for the violation of judicially imposed prophylactic rules.

In our judgment, the Court's statements that Miranda's "prophylactic" requirements sweep more broadly than does the Self-Incrimination Clause itself does not invalidate Miranda's status as a Fifth Amendment decision. The Court has long recognized that the objective of requiring Miranda warnings "is not to mold police conduct for its own sake. Nothing in the Constitution vests in us the authority to mandate a code of behavior for state officials wholly unconnected to any federal right or privilege. The purpose of the Miranda warnings instead is to dissipate the compulsion inherent in custodial interrogation and, in so doing, guard against abridgement of the suspect's Fifth Amendment rights." Moran v. Burbine, 475 U.S. 412, 425 (1986).

It is worth recalling that this Court adopted the procedural safeguards of Miranda only after more than thirty years of applying a case-by-case voluntariness test. That judicial experience led the Court to conclude that Fifth Amendment rights in the custodial interrogation setting could not adequately be protected through case-specific adjudication of claims of police coercion, and that procedural safeguards were required. See, e.g., Haynes v. Washington, 373 U.S. 503, 515 (1963) ("The line between proper and permissible police conduct and techniques and methods offensive to due process is, at best, a difficult one to draw, particularly in cases such as this where it is necessary to make fine judgments as to the effect of psychologically coercive pressures and inducements

on the mind and will of an accused."). While there is room for debate about the wisdom of the Court's adoption of various prophylactic constitutional rules, the Court has explained how Miranda's status as a prophylactic rule is linked to the constitutional provision on which it is based.

In Oregon v. Elstad, supra, the Court described the relationship of the Miranda rules, as explicated in the subsequent cases that recognized their "prophylactic" character, to the Self-Incrimination Clause. The Court explained that the "[f]ailure to administer Miranda warnings creates a presumption of compulsion [that is] * * * irrebuttable for purposes of the prosecution's case in chief." 470 U.S. at 307. Because a confession obtained in violation of Miranda is subject to an "irrebuttable presumption of compulsion" in the prosecution's case-in-chief, the suppression of confessions in that context is consistent with the Self-Incrimination Clause's requirement that a person not be "compelled" to be a witness against himself. It is true, of course, that establishment of such a conclusive presumption is a rule of law that the Court has crafted to administer litigation of Fifth Amendment issues. But that does not detract from its basis in the Court's interpretation of the Constitution.[15]

The Court in Elstad also noted that, because outside the government's case-in-chief a confession obtained in violation of

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[15] See Elstad, 470 U.S. at 306-307 n.1 ("A Miranda violation does not constitute coercion but rather affords a bright-line, legal presumption of coercion, requiring suppression of all unwarned statements [in the government's case-in-chief].")

Miranda is subject only to a rebuttable presumption of compulsion, an unwarned confession may be used for impeachment or to obtain evidence. 470 U.S. at 307 ("But the Miranda presumption, though irrebuttable for purposes of the prosecution's case in chief, does not require that the statements and their fruits be discarded as inherently tainted."). The rule in those settings thus permits use of the confession so long as the presumption of compulsion is overcome by a showing under the totality of the circumstances that the statement was made voluntarily. Ibid.; see Lego v. Twomey, 404 U.S. 477, 489 (1972).

There are other contexts in which this Court similarly has recognized prophylactic rules that are designed to protect constitutional rights, even when those rules may sweep more broadly than the constitutional right upon which they are based.[16] In Michigan v. Jackson, 475 U.S. 625, 636 (1986), the Court held that,

[16] We note that in most criminal settings, the often-heavy costs of such prophylactic rules do not outweigh the potential marginal protection they offer for the underlying constitutional right. Ordinarily, therefore, this Court requires proof of an individualized constitutional harm before framing a remedy. See, e.g., United States v. Morrison, 449 U.S. 361, 364 (1981). And, because judicially devised prophylactic rules are designed merely to provide sufficient protection for the underlying constitutional right, the legislature's adoption of alternative and equally effective safeguards would be valid. See Miranda, 384 U.S. at 467 (noting that the Miranda rules must be observed "unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it."). That does not, however, deprive the Miranda rules of their constitutional status; it merely suggests the possibility that the Constitution's commands may be satisfied in alternative ways. See also United States v. Wade, 388 U.S. 218, 239 (1967) (regulations and procedures that eliminate the possibility of abuse at lineups may also eliminate the otherwise applicable constitutional requirement that counsel be present at post-arraignment lineups).

once a defendant has invoked his Sixth Amendment right to counsel at an arraignment or similar proceeding, "any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid." In Michigan v. Harvey, 494 U.S. 344 (1990), however, the Court held that such invalidity requires suppression of a confession obtained in violation of Jackson only in the prosecution's case-in-chief, but not when it is offered for impeachment purposes. The Court explained that distinction on the ground that Jackson is "not compelled directly by the Constitution," 494 U.S. at 351-352, but sets forth a "prophylactic rule," id. at 345, 346, 349, 351, 353, "designed to ensure voluntary, knowing, and intelligent waivers of the Sixth Amendment right to counsel," id. at 351. The Court acknowledged in Harvey that the rationale of this line of Sixth Amendment decisions based on the rationale underlying Miranda. See 494 U.S. at 349-352.[17]

Similarly, in North Carolina v. Pearce, 395 U.S. 711 (1969), the Court held that an increased sentence imposed on a defendant after a successful appeal and reconviction is presumed to be the

[17] Another example of a prophylactic rule is the Confrontation Clause doctrine of Bruton v. United States, 391 U.S. 123 (1968), which forbids the admission of a nontestifying codefendant's confession in a joint trial, even with a limiting instruction, to avoid the risk that it will be misused by the jury. See Gray v. Maryland, 523 U.S. 185, 189, 192, 197 (1998) (referring to "protective rule" of Bruton). Although some juries might be able to follow a limiting instruction, the Court concluded that the risk that many may not do so warranted a conclusion that the Confrontation Clause itself protects the defendant against the latter possibility. But in a situation where competing values outweigh that risk, the co-defendant's confession may be used. See Tennessee v. Street, 471 U.S. 409 (1985) (confession that is inadmissible under Bruton rule is admissible for impeachment).

product of vindictiveness and therefore unconstitutional unless non-vindictive reasons for the increased sentence appear on the record. The Court has explained that Pearce is a "prophylactic rule" and has noted the similarities between the "prophylactic rules" in Pearce and Miranda. Michigan v. Payne, 412 U.S. 47, 53-54 (1973); see also Wasman v. United States, 468 U.S. 559 (1984); United States v. Goodwin, 457 U.S. 368, 372-377 (1982); Colten v. Kentucky, 407 U.S. 104, 116 (1972). The Court reached a similar conclusion in Blackledge v. Perry, 417 U.S. 21 (1974), holding that a State may not respond to a defendant's attempt to seek a trial de novo in a higher tier of a two-tier court system by charging the defendant with a more serious offense. The Court has recognized that the rules announced in Pearce and Blackledge, like the rules in Miranda and Jackson, require a decision in favor of the defendant in some cases even though the underlying constitutional right being protected may not have been violated in a particular case.[18] But the Court determined that such rules were necessary to the effectuation of the Constitution.[19]

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[18] See Blackledge, 417 U.S. at 27 (applying the rule notwithstanding that there was "no evidence that the prosecutor in this case acted in bad faith or maliciously"); Payne, 412 U.S. at 54 (noting that Pearce adopted presumption of vindictiveness notwithstanding that "nothing in Pearce intimates that the Court regarded [judicial vindictiveness] as anything more than an infrequently appearing blemish on the sentencing process").

[19] The Court has also adopted constitutional prophylactic rules that predictably overprotect constitutional rights in a variety of other settings. See, e.g., Gertz v. Robert Welch, Inc., 418 U.S. 323, 340, 342 (1974) (explaining that, even though "there is no constitutional value in false statements of fact," the Court in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and its (continued...)

Our point is not that such rules are always correct, or that prophylactic rules in a criminal case that lead to the suppression of evidence are often justified. See note 16, supra. In a criminal case, especially where such a rule leads to suppression, it imposes heavy costs on the central truth-finding function of a trial. Thus, no such rule should be adopted without a convincing justification. Nonetheless, prophylactic rules are now and have been for many years a feature of this Court's constitutional adjudication. Miranda is distinctive in the detail with which the Court specified particular procedural safeguards. But Miranda's adoption of a prophylactic rule, which has since been applied where necessary but not where its adverse effects would outweigh any benefits, does not uniquely depart from the Court's constitutional jurisprudence.

(iii.) Change in Factual Premises. There appear to be at least two key factual assumptions underlying Miranda. First, "the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures." 384 U.S. at 467. Second, "without proper safeguards" -- provided by the administration of the Miranda warnings -- there is a great risk that those pressures may "undermine the individual's will to resist and to compel him to speak where he would not otherwise do so

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[19](...continued)
progeny nevertheless "extended a measure of strategic protection to defamatory falsehood" in cases involving public officials and public figures); Freedman v. Maryland, 380 U.S. 51, 58 (1965) (setting forth "procedural safeguards designed to obviate the dangers of a censorship system" with respect to motion picture obscenity).

freely." Ibid. Debate concerning each of those premises is possible, as it was at the time Miranda was decided. The inquiry for purposes of stare decisis, however, focuses on changes in circumstance, because the rule of stare decisis would provide little stability if the factual premises of previous decisions were constantly subject to reconsideration, even when the evidence showed no change of circumstance.[20] We cannot conclude that the passage of time or other developments in our society have substantially altered the validity of either of the factual premises on which Miranda was based.

The Court's perception of custodial interrogation as inherently coercive was based on the Court's prior "voluntariness" cases and its review of police interrogation manuals. See Miranda, 384 U.S. at 445-456. The Court's conclusion was not driven solely by cases of physical abuse; to the contrary, the Court "stress[ed] that the modern practice of in-custody interrogation is psychologically rather than physically oriented." Id. at 448. Custodial interrogation is an important and necessary procedure of law enforcement, and law enforcement agents today are generally better trained than they were in 1966. It cannot be said, however,

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[20] In a companion federal case decided with Miranda, the United States argued that, in deciding whether a suspect's statements during in-custody questioning were the product of compulsion, the Court should require consideration of the totality of the circumstances, rather than adopting a constitutional rule turning on the presence or absence of warnings. Brief for the United States, Westover v. United States, No. 761, at 28-38 (filed February 1966). The calculus of whether to retain Miranda's rule with respect to unwarned statements, thirty-three years after the Court announced it, presents very different considerations.

that the interrogation process is so uniformly different now than at the time of Miranda that changes have undercut the validity of that decision.

With respect to the warnings as an effective antidote to the inherently coercive pressures perceived by the Court in Miranda, there has also been little change in circumstance. Some modern technologies -- videotaping, for example -- could offer promise in documenting that a particular confession was not affected by any coercion inherent in the custodial setting. But no assurance exists that such technological substitutes could provide a suitable replacement for the by-now well-understood Miranda warnings on a large-scale basis. Nor does the widespread public familiarity with the Miranda warnings suggest that they are no longer necessary. If Miranda were overruled, it is difficult to predict how long that familiarity would persist.[21] And even if a suspect held in custody already knows of his rights, the Court in Miranda believed that the provision of warnings in each case "show[s] the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it." Id. at 468. Once again, there is no basis for a conclusion that changed circumstances or a changed perception of the facts warrants reassessment of that view.

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[21] Federal law enforcement agencies would, as a matter of policy, continue to comply with the warnings requirements of Miranda. We are unable to predict whether state and local law enforcement would do so. More to the point here, there would be no basis for the Court to draw a firm conclusion about what practices would ensue were it to overrule Miranda.

* * * * *

In considering whether the Court should revisit Miranda, it is appropriate to make an observation that transcends the usual factors considered under the rubric of stare decisis. In our view, Miranda has come to play a unique and important role in the nation's conception of our criminal justice system: it promotes public confidence that the criminal justice system is fair. Overruling Miranda -- at this juncture, more than three decades after it was announced and after law enforcement has accommodated to its basic requirements -- would thus tend to undermine public confidence in the fairness of that system. The law enforcement system depends on citizen cooperation and support in myriad ways. Steps that may damage that confidence should not be taken lightly.

There is no doubt that the public pays a heavy price if technical violations of Miranda result in suppression of otherwise-reliable evidence, and non-prosecution or acquittal of felons ensues. But there are benefits of Miranda as well, in establishing clear guidelines of conduct for agents, facilitating the admission of confessions that follow administration of the warnings, bolstering the credibility of such confessions in the eyes of jurors, and generally contributing to the perceived fairness of the criminal justice system. The stability of this Court's constitutional jurisprudence is also important to the system of justice. Especially in light of those factors, we do not urge the

Court that Miranda be overruled.[22]

2. Petitioner also contends (Pet. 15-17) that the court of appeals erred by reaching the applicability of 18 U.S.C. 3501 sua sponte and by failing, in any event, to conclude that the district court did not commit plain error in declining to consider it. The path by which the court of appeals reached its decision is unusual. The government did not raise Section 3501 in the district court until moving for reconsideration, and it did not raise Section 3501 on appeal at all.[23] For its part, the court of appeals declined to require the district court to consider the evidence presented in the government's motion for reconsideration that petitioner was read and waived his Miranda rights before making the substance of the statements that were the subject of the suppression order. Instead, the court sua sponte reached the constitutional question raised by Section 3501.[24]

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[22] We note, pursuant to Section 21(c) of Pub. L. No. 96-132, 93 Stat. 1049-1050 (1979), as apparently extended to the past fiscal year by Pub. L. No. 105-277, § 102, 112 Stat. 2681-66, that the position of the Department of Justice set forth in this brief regarding the constitutionality of Section 3501 constitutes the position of the executive branch of the United States.

[23] As Judge Michael noted in his dissent (Pet. App. 25a), the government's decision on appeal not to invoke Section 3501 is consistent with the virtually unbroken practice of the government since the enactment of the statute. See Davis v. United States, 512 U.S. 452, 463-464 (1994) (Scalia, J., concurring) ("[W]ith limited exceptions the provision has been studiously ignored by every Administration, not only in this Court but in the lower courts, since its enactment more than 25 years ago.").

[24] We continue to believe that the court of appeals erred in concluding that it was free to depart from this Court's decision in Miranda based on a perception that that case was undermined by other precedents, see Agostini v. Felton, 521 U.S. at 237-238, and

(continued...)

The court of appeals' action is subject to question on prudential grounds. While appellate courts have a measure of discretion to identify the issues presented for resolution, that discretion does not usually include adjudicating the constitutionality of a statute that the government has declined to invoke on appeal. Nevertheless, the issue whether that discretion was properly exercised in this case does not independently merit review. Nor is review warranted of the case-specific question whether, if Section 3501 was properly before the court of appeals, its applicability to this case should have been reviewed under the plain error standard.

3. Petitioner also seeks review of the court of appeals' holding that the Fourth Amendment does not require suppression of the physical evidence obtained during execution of the search warrant at petitioner's apartment. Pet. 18-22. All three panel members correctly concluded that the physical evidence should not be suppressed, and no broad legal issue is presented.

The Particularity Clause of the Fourth Amendment seeks to prevent "a general, exploratory rummaging in a person's belongings," by requiring that warrants particularly describe the

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[24](...continued)
we also note (as we did in our brief in support of partial rehearing en banc at 13 n.5) that, if the court of appeals had ordered the district court to consider the evidence presented by the government on motion for reconsideration, it might have avoided an unnecessary decision of a constitutional question, see Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). If the Court grants certiorari, the issue of whether the court of appeals should have remanded for further factfinding to determine if petitioner in fact received Miranda warnings before making his statements would be fairly included in the question presented.

items to be seized. See Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). The courts of appeals generally agree that "[t]he test for the necessary particularity is a pragmatic one." United States v. Torch, 609 F.2d 1088, 1090 (4th Cir. 1979) (internal quotation marks omitted), cert. denied, 446 U.S. 957 (1980).[25]

The court correctly upheld the search warrant in this case. The warrant's description of "evidence of the crime of bank robbery" was adequate because bank robbery is a specific and relatively narrow crime that "tends to generate quite distinctive evidence, e.g., guns, masks, bait money, dye-stained bills and clothes, carrying bags." Pet. App. 18a. Such evidence is readily recognizable to trained officers and the warrant thus sufficiently "confine[d] the executing officers' discretion." United States v. Fawole, 785 F.2d 1141, 1144 (4th Cir. 1986). The courts of appeals have repeatedly upheld comparable warrants. See, e.g., United States v. George, 975 F.2d 72, 76 (2d Cir. 1992) ("a specific illegal activity") (citing cases); United States v. Ladd, 704 F.2d 134, 136 (4th Cir. 1983) ("the smuggling, packing, distribution and use of controlled substances").[26]

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[25] See also, e.g., United States v. Moody, 977 F.2d 1425, 1432 (11th Cir. 1992), cert. denied, 507 U.S. 1052 (1993); In re Search of Kitty's East, 905 F.2d 1367, 1374 (10th Cir. 1990); United States v. Shoffner, 826 F.2d 619, 631 (7th Cir.), cert. denied, 484 U.S. 958 (1987); United States v. Davis, 542 F.2d 743, 745 (8th Cir.), cert. denied, 429 U.S. 1004 (1976).

[26] There is no merit to petitioner's reliance (Pet. 18-19) on United States v. Robertson, 21 F.3d 1030 (10th Cir.), cert. denied, 513 U.S. 891 (1994), and United States v. Buck, 813 F.2d 588 (2d Cir.), cert. denied, 484 U.S. 857 (1987). In Robertson, the court upheld a warrant that authorized a search for four specified items
(continued...)

In any event, the court of appeals also correctly determined that the officers relied in good faith on the warrant. See United States v. Leon, 468 U.S. 897, 922 (1984). The warrant provided the officers with some guidance as to the items to be seized, and the lead agent in the case "was familiar not only with the specifics of the bank robbery in question," but also "with the type of evidence to look for." Pet. App. 19a. The court of appeals' unanimous conclusion on that point is consistent with the decisions of the other courts of appeals.[27] Further review of the search warrant issue is not warranted.[28]

CONCLUSION

The petition for a writ of certiorari should be granted as to the admissibility of petitioner's statements and denied as to the admissibility of the items seized in the warrant-authorized search.

Respectfully submitted.

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Attorney General

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[26](...continued)
and "other instrumentalities and fruits of the crime of armed carjacking." 21 F.3d at 1032, 1033-1034. In Buck, the warrant did not even specify the particular crime or crimes under investigation, instead referring generally to the criminal incident orally described by the police officer. Moreover, Buck reversed the district court's order of suppression, finding (as did the court of appeals in this case) that the officers reasonably relied in good faith on the warrant. See Buck, 813 F.2d at 592-593.

[27] See, e.g., Robertson, 21 F.3d at 1034; Buck, 813 F.2d at 592-593.

[28] Although petitioner claims (Pet. 20-21) that Agent Lawlor misled the magistrate judge who issued the search warrant, that factbound assertion was unanimously rejected by the court of appeals. Pet. App. 20a n.6.

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NOVEMBER 1999

APPENDIX

Section 3501 of Title 18 provides as follows:

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time o making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the abovementioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate or other official empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other

detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other official beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

IN THE SUPREME COURT OF THE UNITED STATES

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NO. 99-5525

CHARLES THOMAS DICKERSON, PETITIONER

v.

UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served with copies of the **BRIEF FOR THE UNITED STATES**, by First Class Mail, postage prepaid, on this 1st day of November, 1999.

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November 1, 1999

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